

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90084

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: March 25, 2015)

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Magistrate Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Complainant is an attorney who is licensed to practice outside this jurisdiction. In early 2012, an attorney who is admitted to practice within this jurisdiction moved for

Complainant's admission *pro hac vice* to represent a plaintiff in a civil employment discrimination case. Complainant was admitted. The matter was referred to the Subject Judge, who oversaw a lengthy and contentious discovery period.

In August 2013, the Subject Judge issued an order to show cause why sanctions should not be imposed upon Complainant for "repeated failure to comply with orders of this Court." During the subsequent hearing, the Subject Judge stated that Complainant would be held in contempt. Complainant filed a motion for reconsideration and for the Subject Judge's recusal. Shortly thereafter, the Subject Judge held a telephone conference with counsel. She clarified that a written contempt order had not been issued and stated that she wanted to hear from Complainant on the subject. She later issued a written order that, in addition to setting additional discovery deadlines, vacated the oral contempt order, directed that local counsel must appear on behalf of plaintiff at all hearings until further order of the Court, and deemed the recusal motion withdrawn. Discovery concluded and, in September 2014, the defendants filed a motion for summary judgment. The presiding District Judge recently granted summary judgment to defendants on two claims. The matter is ongoing.

In this complaint of judicial misconduct, Complainant alleges that "[i]n the course of representing the plaintiff, I suffered a number of abuses from this Judge that I have never experienced in my many years as a lawyer." Among other things, Complainant alleges that the Subject Judge "refused to grant plaintiff's demands for discovery through various underhanded methods," including by "ignoring the request outright" or by

“deferring to the defendants’ position on the discovery request.” Complainant further alleges that the Subject Judge “threatened” him “with making sure I am never admitted” to practice within the jurisdiction, and “brought criminal contempt against myself [for] no justifiable reason.” Finally, he alleges that the Subject Judge “has outright refused to allow[] me to argue on behalf of my client, an[d] actually instructed me not to speak, when I have tried to raise objections.” Complainant contends that the alleged bias and abuse on the part of the Subject Judge “stem[] from my race, being black.”

I requested that the Subject Judge respond to Complainant’s allegations. The Subject Judge responded in writing and also provided copies of the transcripts of the relevant hearings, including the hearing at which she stated the Complainant would be held in contempt and the subsequent telephone conference with counsel prior to vacating the contempt order. After review of the record and the Subject Judge’s response, I address the complaint.

A number of Complainant’s allegations challenge the Subject Judge’s oversight of the discovery process and her approach to the issue of whether to hold Complainant in contempt. Such allegations are clearly merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations are dismissed.

Notably, neither Complainant nor local counsel has filed an appeal of any decision by the Subject Judge to the presiding District Judge. The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

When considered apart from the merits-related allegations, it is clear that Complainant’s allegations of racism, bias, and abuse on the part of the Subject Judge are baseless and unsupported by the record. Although the Subject Judge’s frustration with Complainant is evident, the Subject Judge’s demeanor consistently remained appropriate. For instance, during one of the hearings, the Subject Judge specifically stated, “I don’t necessarily agree with you, but I would like to have whatever additional views you have with respect to my ruling regarding contempt in writing, so I can incorporate it as part of the record.” Thus, it is evident that Complainant was permitted ample time to present his position and was treated with a suitable degree of respect.

Moreover, “expressions of impatience, dissatisfaction, annoyance, and even anger” arising during ordinary efforts at courtroom administration do not establish bias or partiality, unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. See Liteky v. United States, 510 U.S. 540, 555 (1994); see also United States v. Wecht, 484 F.3d 194, 220 (3d Cir. 2007) (same). The record reveals no evidence of antagonism, favoritism, or any behavior that could rise to the level of

demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, Complainant's unfounded allegations are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90084

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: March 25, 2015)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the office of the clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: March 25, 2015